

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2366

SPONSOR: Criminal Justice Committee and Senator Fasano

SUBJECT: Aggravated Child Abuse

DATE: April 3, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 2366 defines “maliciously” as it is used to modify “punishes” in the aggravated child abuse statute to mean “wrongfully, intentionally, without legal justification or excuse.” The CS also specifies that maliciousness may be established by circumstances from which there was a reasonable belief that the punishment was inflicted with a desire to cause the victim to suffer unjustifiable pain.

This CS substantially amends s. 827.03 of the Florida Statutes.

II. Present Situation:

Section 827.03(2), F.S., proscribes the offense of aggravated child abuse. It is first degree felony aggravated child abuse to do any of the following: commit aggravated battery on a child; willfully torture, *maliciously* punish, or willfully and unlawfully cage a child; or knowingly or willfully abuse a child and cause great bodily harm, permanent disability, or permanent disfigurement to a child.

This statute does not include a definition of malicious. The Florida Supreme Court, however, has defined it to mean “ill will, hatred, spite, an evil intent.” *State v. Gaylord*, 356 So.2d 313, 314 (Fla.1978). The Court recently found that this definition is the correct one to use in prosecuting aggravated child abuse cases, rather than the then existing definition of malicious in the standard jury instructions. *Reed v. State*, 837 So.2d 366 (Fla.2002). As a result of *Reed*, however, the standard jury instruction for malicious was changed from “wrongfully, intentionally, without legal justification or excuse” to conform to the Florida Supreme Court’s *Gaylord* definition. The *Gaylord* definition requires proof of actual malice, or ill will, hatred, or an evil intent, whereas

the former jury instruction definition only required proof of legal, or technical malice or an intentional act performed without legal justification or excuse. *Id.* at 369.

III. Effect of Proposed Changes:

The Committee Substitute for Senate Bill 2366 defines “maliciously” as it is used to modify “punishes” in the aggravated child abuse statute to mean “wrongfully, intentionally, and without legal justification or excuse.” This new definition essentially codifies the former definition of malicious found in the standard jury instructions before it was changed to conform to the definition adopted by the Florida Supreme Court in *Gaylor* and *Reed* (see discussion in present situation). The CS also specifies that maliciousness may be established by circumstances from which there was a reasonable belief that the punishment was inflicted with a desire to cause the victim to suffer unjustifiable pain.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
